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Supreme Court No. 98789-2

Court of Appeals No. 79882-1-I

THE SUPREME COURT OF THE STATE OF WASHINGTON

NORMAN GOTCHER, JR.,

Appellant

v.

AAMCO TRANSMISSION CORP., et al.,

Respondents,

**RESPONDENTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
WAIVER OF SUPREME COURT FILING FEE,
AND ANSWER TO PLAINTIFF'S
PETITION FOR DISCRETIONARY REVIEW**

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I. IDENTITY OF RESPONDENTS/ANSWERING PARTY

Defendants/Respondents are AAMCO Transmission Headquarters of Horsham, PA#, Brian O'Donnell, AAMCO of Seattle, and Glen Barnhart. Respondents oppose plaintiff Norman Gotcher's motion for waiver of the \$200 filing fee for this Court, and also request that this Court deny plaintiff's Petition for Review.

A. Issues Presented For Review

Plaintiff Norman Gotcher seeks review of the Court of Appeals' June 24, 2020 order denying his motion to modify. He also appears to seek review of a number of trial court rulings – but no trial court rulings are before this Court. Mr. Gotcher also requests that this Court waive the \$200 filing fee that is required for the filing of a petition for discretionary review.

The Court of Appeals' June 24 decision affirmed the February 14, 2020 notation ruling of Commissioner Masako Kanazawa. Commissioner Kanazawa denied plaintiff's request for an open-ended stay of the lawsuit until he is released from prison, and ruled that if plaintiff did not file his Clerk's Papers by March 13, 2020, the case would be dismissed. Plaintiff admits that he never paid for his Clerk's Papers and that the Clerk's Papers were never filed. This Court had previously denied plaintiff's request to proceed with his appeal at public expense. Accordingly, his

appeal was always going to be dismissed, at some point, if he did not pay for his Clerk's Papers. This Court's prior ruling made the Commissioner's notation ruling, and the Court of Appeals' Order denying the motion to modify that ruling, inevitable in light of plaintiff's failure to pay for his Clerk's Papers and file them.

Mr. Gotcher requests that this Court waive the \$200 filing fee that is required to seek discretionary review of the June 24, 2020 order. However, this Court necessarily already found, in declining to allow plaintiff to pursue his appeal at public expense, that he did not satisfy the criteria of RAP 15.2(d). Plaintiff's motion for waiver of this Court's filing fee is essentially taking another bite at the apple.

The Court should not grant discretionary review when it has already in essence rejected plaintiff's argument, and should not waive the filing fee, because he has not met the requirements of RAP 15.2(d) or RAP 13.4(b). This Court could not grant discretionary review of the June 24, 2020 order, without also holding that plaintiff does not have to pay for his Clerk's Papers, and this Court's prior order already dictates that plaintiff was required to pay for his own Clerk's Papers.

II. COUNTER-STATEMENT OF THE CASE

Plaintiff filed suit against Defendants/Respondents after his car was parked on the street for too long and was towed as a result; he failed

to respond to the tow company's letter notification, and the car was auctioned off. In January 2016, plaintiff had brought the car (a 2000 Chrysler 300) to defendant AAMCO's shop for diagnosis, but the estimated \$2,000 value of the car was far less than the estimated cost to repair the serious problems with the car. Plaintiff's sister was given the keys to the car at his request, but she never arranged to have the car towed from the street in front of the AAMCO shop. APPENDIX A. It was later learned that plaintiff was in prison during this time for having broken into a home to burglarize it. It is on this charge that he is still imprisoned.

Plaintiff filed a lawsuit against Defendants/Respondents which did not state any cognizable claim against AAMCO or any of the other defendants. The trial court dismissed the lawsuit on March 1, 2019, and denied reconsideration on April 10, 2019. APPENDIX A. The trial court's order granting dismissal makes clear that the Department of Corrections not allowing plaintiff to call in for oral argument on the motion made no difference – the trial court simply decided the motion without oral argument from any party.

Plaintiff's notice of appeal was filed on May 2, 2019. On September 4, 2019, this Court denied plaintiff's request to proceed with his appeal at public expense. APPENDIX A. This Court denied

plaintiff's motion for reconsideration of this order on September 24, 2019.

APPENDIX A.

After the Court of Appeals gave him many extensions of time to provide his Clerk's Papers, he still did not do so, and instead moved on January 27, 2020, for an open-ended stay of the appeal until he is released from prison. Defendants/Respondents opposed his request for a stay and moved to dismiss the appeal on February 12, 2020, because – months after filing his notice of appeal, and after numerous extensions granted by the Court of Appeals – plaintiff had failed to prosecute his appeal.

The timeline of the many extensions granted to plaintiff by the Court of Appeals is set forth in Defendants'/Respondents' Motion to Dismiss Appeal and Opposition to Plaintiff's 1/27/20 Motion to Stay Appeal, which is included in APPENDIX A. In the interest of judicial economy, that timeline is incorporated here by reference rather than being set forth again. In their Motion to Dismiss, Respondents noted the many ways in which the Court of Appeals had been extraordinarily patient with plaintiff, and explained why it was time for plaintiff's appeal to be dismissed given his failure to comply with case deadlines and orders from the Court of Appeals.

In response to Respondents' Motion to Dismiss, the Court of Appeals gave plaintiff one last opportunity to submit his Clerk's Papers.

APPENDIX B. On February 14, 2020, Commissioner Masako Kanazawa entered a notation ruling giving plaintiff/appellant Norman Gotcher

one last extension of the time to file the clerk's papers, including payment for the record, until March 13, 2020. If Gotcher fails to file the clerk's papers by March 13, 2020, this case will be dismissed without further notice of this Court.

Commissioner Kanazawa detailed the numerous extensions granted to plaintiff, the fact that he had not supported the relief he requested, and why this Court's prior orders dictated that plaintiff was obligated to pay for his Clerk's Papers.

Plaintiff then filed a pleading that the Court of Appeals treated as a motion to modify the February 14 notation ruling. Defendants/Respondents opposed the motion to modify. APPENDIX C. Respondents noted that plaintiff had provided the Court of Appeals with no basis to modify the notation ruling. Plaintiff disputed trial court rulings, but disagreement with trial court rulings could only be raised in an appellate brief, after his Clerk's Papers had been filed. He asserted that it was the Court of Appeals' burden or the trial court's burden to decide what portions of the record were needed for pursuit of his appeal – but it was actually his burden to determine what portions of the record were necessary for review, and he had, in fact, designated Clerk's Papers (essentially the entire trial court record).

Rather, plaintiff had simply not taken any steps to have Clerk's Papers generated and then transmitted to the Court of Appeals. Respondents noted that plaintiff continued to defy the Court of Appeals' orders by asserting that the trial court should provide some or all of the Clerk's Papers "at public expense," but this assertion was foreclosed by this Court's September 4 order. This Court's order dictated that plaintiff must pay for all costs of his appeal, which includes paying for the entire cost of all Clerk's Papers he designated.

As the Commissioner's notation ruling details, the Court of Appeals was extraordinarily patient with plaintiff, but plaintiff's appeal had been pending for nearly a year, with no indication that plaintiff had taken steps to have the Clerk's Papers generated. To the contrary, he continued (and continues) to dispute this Court's decision that he must pay for the Clerk's Papers.

The Court of Appeals denied plaintiff's motion to modify on June 24, 2020. APPENDIX D. Because the Clerk's Papers had still not been filed by that date, more than three months after the Commissioner's final deadline had expired on March 13, the Court of Appeals dismissed the appeal.

Plaintiff filed a Petition for Review that was received by this Court on July 24. He then filed another pleading entitled "Petition for Review"

that this Court received on August 3. The Court treated the second “Petition for Review” as an amended petition that superseded the first petition. On August 7, this Court received plaintiff’s Motion for Waiver of \$200 Filing fee.

This Court’s August 12, 2020 letter advised that Respondents’ opposition to plaintiff’s motion for waiver of the \$200 filing fee, and Respondents’ answer to plaintiff’s petition for review, would be due on the same date. This Court invited Respondents to address both plaintiff’s motion for waiver of the filing fee, and his petition for review, in one combined response pleading. Respondents have accepted this Court’s invitation by addressing both the motion and the petition in this combined response pleading.

A. Argument Why Motion Should Be Denied, and Review Should Be Denied

The Supreme Court will only accept a petition for review under four circumstances:

- 1) The decision of the Court of Appeals conflicts with a decision of the Supreme Court;
- 2) The decision of the Court of Appeals conflicts with another decision of the Court of Appeals;
- 3) The petition raises a significant question of Washington or United States constitutional law; or

- 4) The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Plaintiff's petition does not cite to any provision of RAP 13.4(b), let alone explain how any of these requirements for review are met with regard to his petition. He baldly asserts, with no support, that his constitutional rights have been violated. Likewise, he asserts that his petition presents an issue of substantial public interest, but does not explain how. Allowing a prisoner to pursue at public expense a meritless appeal of an order dismissing his civil lawsuit does not implicate any public interest at all, let alone a substantial public interest, and does not implicate any constitutional issues.

As previously, Mr. Gotcher continues to assert that the trial court's finding of indigency somehow freed him to proceed with his civil case appeal at no expense to himself. This argument is foreclosed by the plain language of RAP 15.2. Under RAP 15.2(b), an appeal at public expense as a matter of right is only possible in certain enumerated types of cases, of which an appeal in a civil matter is not one.

Rather, RAP 15.2(c) governs an effort to proceed at public expense with appeals in types of cases not listed in RAP 15.2(b), and would govern plaintiff's effort to proceed at no expense to himself with his civil case

appeal. Plaintiff showing a lack of financial resources is merely the first step in attempting to convince this Court to allow him to proceed with a civil case appeal at public expense. In order to satisfy the requirements of RAP 15.2(c), he would also have to demonstrate that the issues he wanted reviewed “have probable merit,” and further demonstrate that he has “a constitutional or statutory right to review partially or wholly at public expense,” both of which are then decided by this Court under RAP 15.2(d).

Under RAP 15.2(d), this Court will enter an order of indigency, allowing a party to proceed with an appeal of a civil case at public expense, only if this Court determines that “the party is seeking review in good faith, that an issue of probable merit is presented, and that the party is entitled to review partially or wholly at public expense[.]” This Court’s September 4, 2019 order establishes that this Court has already determined that plaintiff failed to meet the burden imposed on him by RAP 15.2(c) and (d). In entering this order, this Court necessarily determined that plaintiff failed to show probable merit of the arguments he was advancing in his appeal, or that he failed to show that he had a constitutional or statutory right to review partially or wholly at public expense, or both.

Given the Court’s September 4, 2019 order, the Court’s task with regard to plaintiff’s motion for waiver of the filing fee is easy – the motion

should be denied, consistent with this Court's earlier order. No cost aspect of a civil appeal should be waived unless the person seeking such permission has satisfied the requirements of RAP 15(c) and (d). This Court has already concluded that plaintiff failed to satisfy these requirements.

If the Court were to elect to waive the filing fee and then address plaintiff's petition for review, the petition for review should still be denied. The Court of Appeals' notation ruling, and order denying plaintiff's motion to modify, were correct. Plaintiff has not satisfied the requirements of RAP 13.4(b) or RAP 15.2(d), and his lawsuit was always doomed to fail.

This Court could not grant plaintiff's petition for review without also holding that he is not obligated to pay for his Clerk's Papers, which the Court could not do without reversing its own prior decision. Plaintiff has provided this Court with no basis upon which the Court could, or even should, reverse its earlier decision. It remains true that he has not satisfied the requirements of RAP 15.2(c) or (d).

It would be a tremendous waste of judicial resources for this Court to resurrect plaintiff's lawsuit. The Court of Appeals' notation ruling and June 24 order, which are the only decisions before this Court, do not implicate any significant question of constitutional law or any issue of

substantial public interest that would warrant this Court's review. His motion and petition should be denied.

Plaintiff also complains about his alleged access to law library materials at his current prison, but that is an internal matter to be addressed through Department of Corrections procedures. Moreover, dismissal of his appeal was based on his failure to provide his Clerk's Papers. Nothing about Department of Corrections procedures, actions, or access to the law library could have made the least bit of difference given the basis upon which the Court of Appeals dismissed plaintiff's appeal. His complaints about the Department of Corrections do not provide a basis for this Court to grant his petition for review.

III. CONCLUSION

There is no need for this court to review the dismissal of plaintiff's appeal based on his failure to provide his Clerk's Papers to the Court of Appeals. The Court of Appeals correctly applied Washington law, and plaintiff has failed to establish that review is appropriate under RAP 13.4(b). This Court's September 4, 2019 order dictated that plaintiff was obligated to pay for his Clerk's Papers, and the Court of Appeals merely enforced this requirement after plaintiff failed to provide the Clerk's Papers despite many extensions. Plaintiff's petition does not involve a significant issue of constitutional law, or an issue of substantial public

interest. The Court should deny plaintiff's motion for waiver of the filing fee, and summarily deny his petition for review. If this Court were to grant plaintiff's motion for waiver of the filing fee, the Court should still deny his petition for review because he has not satisfied the requirements of RAP 13.4(b).

DATED this 9th day of September, 2020.

SOHA & LANG, P.S.

By: *s/Nathaniel J.R. Smith*

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CERTIFICATE OF SERVICE

I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action; my business address is SOHA & LANG, PS, 1325 Fourth Avenue, Suite 2000, Seattle, WA 98101.

I hereby certify that on September 9, 2020, I caused to be served a true and correct copy of the foregoing **RESPONDENTS' OPPOSITION TO PLAINTIFF'S MOTION FOR WAIVER OF SUPREME COURT FILING FEE, AND ANSWER TO PLAINTIFF'S PETITION FOR DISCRETIONARY REVIEW** on the following named person as indicated:

Norman Gotcher, Jr.
Pro Se
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326
Via U.S. First Class Mail

Dated this 9th day of September, 2020.

s/Helen M. Thomas
Helen M. Thomas
Legal Assistant to Nathaniel J. R.
Smith

APPENDIX A

NO. 79882-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

NORMAN GOTCHER, JR.,

Appellant

v.

AAMCO TRANSMISSION CORP., et al.,

Respondents

**DEFENDANTS'/RESPONDENTS' MOTION TO DISMISS APPEAL
AND OPPOSITION TO PLAINTIFF'S 1/27/20 MOTION TO STAY
APPEAL**

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I. IDENTITY OF MOVING PARTY

Defendants/Respondents (AAMCO Transmission Headquarters of Horsham, PA#, Brian O'Donnell, AAMCO of Seattle, and Glen Barnhart), ask for the relief designated in Part II. For the sake of efficiency, given the overlapping issues, this pleading also serves as the opposition of Defendants/Respondents to plaintiff's January 27, 2020, "Second Request of Motion for Stay of Proceedings: RAP 8.1(b)(3)."

II. STATEMENT OF RELIEF SOUGHT

Defendants/Respondents move to dismiss the appeal by plaintiff Norman Gotcher because, months after filing his notice of appeal, and after numerous extensions granted by this Court, he has failed to prosecute this appeal. Defendants/Respondents also seek the denial of plaintiff's January 27, 2020, "Second Request of Motion for Stay of Proceedings: RAP 8.1(b)(3)" because he has not met the standard for a stay. To the contrary, his motion reflects his ongoing refusal to pay for his Clerk's Papers, despite the fact that the Washington Supreme Court has held that he must pay for all costs of this appeal, which includes paying for his Clerk's Papers. This Court has been extraordinarily patient with plaintiff, but it is time for the appeal to be dismissed given his failure to comply with case deadlines and this Court's orders.

III. FACTS RELEVANT TO MOTION

Plaintiff filed suit against Defendants/Respondents after his car was parked on the street for too long and was towed as a result; he failed to respond to the tow company's letter notification, and the car was auctioned off. In January 2016, plaintiff had brought the car (a 2000 Chrysler 300) to defendant AAMCO's shop for diagnosis, but the estimated \$2,000 value of the car was far less than the estimated cost to repair the serious problems with the car. Plaintiff's sister was given the keys to the car at his request, but she never arranged to have the car towed from the street in front of the AAMCO shop. APPENDIX I (Defendants' Motion to Dismiss). It was later learned that plaintiff was in prison during this time for having broken into a home to burglarize it. It is on this charge that he is still imprisoned.

He filed a lawsuit against defendants/respondents which did not state any cognizable claim against AAMCO or any of the other defendants. The trial court dismissed the lawsuit on March 1, 2019, and denied reconsideration on April 10, 2019. APPENDIX II (trial court orders).

Plaintiff appealed on May 2, 2019. This Court acknowledged his notice of appeal on May 3, but advised him that due to his failure to pay the filing fee or submit a proper order of indigency, a court's motion to

dismiss had been set for May 31, 2019. APPENDIX III (Court of Appeals Orders). On May 30, this Court advised plaintiff that unless the Washington Supreme Court granted him permission to proceed with the appeal at public expense, he would have to pay for preparation of the record – which includes paying for the Clerk’s Papers. See APPENDIX III.

On July 22, 2019, this Court advised the parties that all due dates in the appeal were suspended, pending the outcome of plaintiff’s motion for expenditure of public funds. APPENDIX III. The July 22 order advised plaintiff that if his motion for public expenditure were denied, the appellate filing fee would be due within 15 days of the denial of the motion, and if not paid a court’s motion to dismiss the appeal would be set.

Ultimately, the Supreme Court denied plaintiff’s request to proceed at public expense on September 4, 2019, necessarily meaning that the Supreme Court concluded he had not satisfied the requirements for expenditure of public funds relating to his appeal. APPENDIX IV (Supreme Court Orders). This Court advised plaintiff on September 5 of the need to contact the trial court immediately to ensure the timely transmittal of the record on appeal, and to advise this Court within 10 days

(by September 16, 2019) of the status of the Clerk's Papers. APPENDIX III.

This Court then wrote to plaintiff again regarding the absence of Clerk's Papers on September 16, 2019, setting a motion to impose sanctions and/or dismiss for September 27. APPENDIX III. The Supreme Court denied plaintiff's motion for reconsideration of its order denying expenditure of public funds on September 24, 2019. APPENDIX IV. The September 24 letter from the Supreme Court clerk explained that being permitted to pursue an appeal at public expense is not simply a matter of indigency, as plaintiff appeared to believe – it is also a matter of plaintiff proving to the Supreme Court that he was seeking review in good faith and that his arguments had probable merit. Given plaintiff's claims and the facts, it is not at all surprising that the Supreme Court found that plaintiff did not meet the requirements of RAP 15.2(d).

This Court then continued the court's motion to dismiss to October 18, 2019. APPENDIX III. This Court's September 25 order doing so stated that review would be dismissed unless plaintiff had filed in the trial court a designation of Clerk's Papers that complies with RAP 9.6. On September 26, this Court extended the October 18 deadline to November 8. APPENDIX III. The September 26 order advised that no further extensions would be granted.

Despite this statement, this Court then granted plaintiff another extension on November 1, 2019, continuing the Court's motion to dismiss to December 6, 2019. APPENDIX III. This Court's November 1 order reminded plaintiff that if the appeal is to go forward, he must provide the record at his own expense. This Court generously gave him explicit instructions on what he needed to do before December 6 in order to avoid having his appeal dismissed. On December 6, this Court then gave plaintiff yet another extension, to December 27, 2019. APPENDIX III.

On January 21, this Court gave plaintiff yet another extension, to January 31, to have his Clerk's Papers in order. Despite this, Clerk's Papers have not been prepared or submitted, and there is no reason to believe this will change because rather than arranging for Clerk's Papers to be submitted, plaintiff continues to demand that the trial court prepare and transmit his Clerk's Papers at no expense to him.

Plaintiff's January 27 motion to stay continues to assert that he should not have to pay for his costs in this appeal because of a prior trial court order of indigency. His argument ignores that the Supreme Court's order declining expenditure of public funds is what controls his payment obligations with regard to this appeal, and ignores the fact that the trial court's order of indigency has no relevance at all to his obligations in this appeal. The Supreme Court's September 4 order dictates that plaintiff

must pay for his Clerk's Papers, and the Supreme Court's September 24 letter notes that the Supreme Court necessarily did not find that the RAP 15.2(d) factors were met for plaintiff to be allowed to proceed with his appeal at public expense.

The trial court's December 17 letter to plaintiff has made very clear to plaintiff that the trial court will not provide him with Clerk's Papers unless he pays for them. See Appendix II. This appeal is never going to move forward, despite this Court's generosity in giving plaintiff so many extensions, given plaintiff's refusal to pay for the Clerk's Papers he has designated. Counsel for Defendants/Respondents has confirmed with the King County Clerk's office that the trial court is not currently working on any Clerk's Papers relating to this appeal, and considers the matter closed, as reflected in the trial court's December 17 letter to plaintiff. Thomas Dec., ¶ 2.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Pursuant to RAP 9.6, the party seeking review must generally file a proper Designation of Clerk's Papers within 30 days of filing his notice of appeal. The Court has given plaintiff many extensions, over a period of several months, to get his Clerk's Papers submitted, but he has not done so. He continues to ignore that Supreme Court's order, which dictates that he must pay for his Clerk's Papers.

Despite this Court's many extensions, to this very day there are no Clerk's Papers, more than nine months after the Notice of Appeal was filed. Given the Supreme Court's denial of his motion to proceed with his appeal at public expense, plaintiff must pay for the Clerk's Papers he has designated. See RAP 9.6(c)(3); RAP 9.7(a); RAP 15.2(d). The trial court will not provide the Clerk's Papers until plaintiff pays for them. See RAP 9.8(a).

As this Court is aware from plaintiff's filings, he has continued to hound the trial court for free Clerk's Papers based upon the earlier trial court order of indigency, despite the Supreme Court having subsequently definitively determined that he is not permitted to proceed with his appeal at public expense. Appendix IV. For example, even in his November 19, 2019 "Amended Designation Request of Clerk's Papers RAP 9.6(b)(2)", following his listing of literally every item on the trial court docket, he included language asserting that the trial court's order of indigency excused him from paying for the Clerk's Papers. His assertion in this regard is simply wrong given the Supreme Court's September 4 order. There is simply no question that plaintiff is obligated to pay for his Clerk's Papers, and that his failure to do so conflicts with the Supreme Court's order and this Court's orders.

The trial court will never transmit the Clerk's Papers without plaintiff first paying for them, given the Supreme Court's decision that plaintiff must pay for the costs of his appeal. In fact, the trial court has closed plaintiff's request for Clerk's Papers without action, due to his failure to pay for the Clerk's Papers. Appendix II (12/17/19 trial court letter). Thus, regardless of how many additional extensions this Court gives plaintiff, there is no reason to believe the Clerk's Papers will ever be generated. Were this Court to grant plaintiff's pending motion for a stay, the Court would simply be delaying the inevitable dismissal of the appeal for his failure to pay for his Clerk's Papers.

Defendants/Respondents seek dismissal of plaintiff's appeal, now that the deadline has passed of the Court's latest extension for him to have his Clerk's Papers prepared, because plaintiff's conduct shows that he has effectively abandoned his appeal under RAP 18.9(c):

RULE 18.9. VIOLATION OF RULES

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in rule 18.8(b), for failure to timely file a notice of appeal, a notice of discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

Here, despite being told by the trial court on December 17, definitively, that it would not be taking any action on any motion he filed relating to Clerk's Papers – indicating that plaintiff must pay for his Clerk's Papers like every other appellant must – he has simply continued to stall in this Court. Knowing that this Court's last extension would expire on January 31, rather than simply paying for his Clerk's Papers as he is required to do, he filed an unusual pleading entitled: "Second Request of Motion for Stay of Proceedings: RAP 8.1(b)(3)."

This handwritten motion, as with all of plaintiff's pleadings, is difficult to follow. However, the gist of his motion is that he would like this Court to stay his appeal for an indeterminate amount of time, until after he is "released from prison and can financially pursue litigation." In support of this request, he cites to RAP 8.1(b)(3), but RAP 8.1(b)(3) does not provide a basis for the relief he seeks. RAP 8.1(b)(3) addresses staying the enforcement of a judgment. That is not at issue where, as here, a trial court has granted a summary judgment motion dismissing a lawsuit. See RAP 8.1(a).

Typically, RAP 8.1(b)(3) comes into play when a trial court has entered a judgment that ordered equitable relief against a party, and the party is seeking to avoid complying with that ordered equitable relief while appealing the order directing it to take such actions. Most of

plaintiff's motion to stay rehashes his arguments on the substance of his appeal, but these arguments do not excuse him from complying with the procedural requirement that he take all the necessary steps to have Clerk's Papers transmitted – at his own expense. Plaintiff's latest motion for stay makes clear that he has no intention of paying for Clerk's Papers, and is instead choosing to ignore the Supreme Court's order which dictates that he cannot proceed with this appeal unless and until he has paid for Clerk's Papers.

This Court has been very patient with plaintiff, and he continues to simply ignore this Court's orders. Defendants/Respondents are entitled to have this matter put behind them in the near future. Plaintiff seeks an open ended stay of this appeal, on claims that the trial court found had no merit, and Defendants/Respondents believe were and are frivolous. The civil rules do not provide for an indeterminate stay of a plaintiff's appeal of the summary judgment order dismissing his claims. The authority he cites does not support the relief he requests. His latest course of action, and continued delay and defiance of this Court's orders, warrant dismissal. RAP 18.9(c); RAP 1.2(b). Even factoring in plaintiff's incarceration, this was a frivolous lawsuit that was always doomed to fail, and it is unfair to defendants/respondents to have this appeal sitting open for an

indeterminate amount of time while plaintiff flouts the rules and this Court's orders.

DATED this 12th day of February, 2020.

SOHA & LANG, P.S.

By: *s/Nathaniel J.R. Smith*

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PA#, Brian O'Donnell, AAMCO of Seattle,

Glen Barnhart

CERTIFICATE OF SERVICE

I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action; my business address is SOHA & LANG, PS, 1325 Fourth Avenue, Suite 2000, Seattle, WA 98101.

I hereby certify that on February 12, 2020, I caused to be served a true and correct copy of the foregoing **DEFENDANTS'/RESPONDENTS' MOTION TO DISMISS APPEAL AND OPPOSITION TO PLAINTIFF'S 1/27/20 MOTION TO STAY APPEAL** on the following named person as indicated:

Norman Gotcher, Jr.
Pro Se
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Coyote Ridge Corrections Center
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Connell, WA 99326
Via U.S. First Class Mail

Dated this 12th day of February, 2020.

s/Helen M. Thomas
Helen M. Thomas
Legal Secretary to Nathaniel J. R.
Smith

APPENDIX I

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

NORMAN GOTCHER, JR.,
Plaintiffs,

vs.

AAMCO TRANSMISSION CORPORATION
HEADQUARTERS OF HORSHAM. PA# PRIOR
OWNER BRIAN O'DONNELL, AAMCO OF
SEATTLE, GLEN BARNHART, SHOP
MANAGER ET AL,
Defendants.

Case No.: 18-2-06128-8 SEA

DEFENDANTS' MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF
CAN BE GRANTED UNDER 12(B) 6

Pursuant to CR 12(b)6 Defendants through their assigned counsel respectfully move
this Court to dismiss this case for failure to state a claim upon which relief can be granted.

DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED UNDER 12(B) 6 - 1

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Employees of the Farmers Insurance Exchange, a Member of the
Farmers Insurance Group of Companies.

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I. INTRODUCTION

Plaintiff's Complaint fails to identify a legal basis for his claims that: (a) Defendants have allegedly deprived him of any constitutional rights, (b) the basis or any relevance of an excess of statutory [sic] required number of employees in interstate commerce for purposes of Title VII, (c) Plaintiff's failure to arrange towing of his vehicle was Defendants' legal responsibility, (d) Plaintiff's failure to motivate his sister to arrange towing of his vehicle was Defendants' legal responsibility, (e) Plaintiff's abandoned vehicle allegedly became Defendants' legal responsibility, (f) any basis for compensatory damages of \$200,000 exists, or (g) punitive damages may be awarded.

Instead Plaintiff's Complaint makes nearly illegible wild allegations that defendants' failure to have his abandon vehicle towed somehow falls within the duties and responsibilities of a mechanical shop with no arrangement for repair. No such claim exists in law.

II. FACTUAL BACKGROUND

17 On or about a day in January 2016 Plaintiff brought his 2000 Chrysler 300 to the
18 Defendant AAMCO shop at 2107 23rd Ave. S., Seattle, to the prior owners. *See* Decl of Glen
19 Barnhart. Defendant AAMCO shop owner Chris Kim purchased the AAMCO shop around
20 that time and hired Defendant Glen Barnhart to run it. *See* Decl of Chris Kim. Glen recalls
21 the plaintiff's vehicle having a "bad engine" and a "bad transmission" specifically it had a
22 blown head gasket. *See* Decl of Barnhart. The estimated value of the car at \$2,000 was far
23 less than the estimated cost of repair. *See* Decl of Barnhart. Either way, Plaintiff did not
24

25 DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
26 CAN BE GRANTED UNDER 12(B) 6 -2

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Employees of the Farmers Insurance Exchange, a Member of the
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1 have the money to afford the repairs so no repairs were arranged or done. *See* Decl of
2 Barnhart. No agreement was ever reached as to any repairs. *See* Decl of Barnhart.

3 Over the ensuing few months after that initial contact the plaintiff was jailed and
4 arrangements were eventually made to get the car out of the shop. *See* Decl of Barnhart.

5 The plaintiff's sister was given the keys and the name along with estimated cost of
6 towing by Brian's' Towing who they always used/ and still use. *See* Decl of Barnhart.

7 However, even though she said she would, she never made arrangements to have the vehicle
8 towed. *See* Decl of Barnhart.

9 Thinking the sister had made arrangements to tow the vehicle Defendants placed it
10 across the street where it sat for awhile (estimated two weeks). *See* Decl of Barnhart. While
11 there, apparently it was ticketed twice by the City of Seattle and eventually impounded. *See*
12 Decl of Jeff Coats exh A. Notices were sent to the registered address of the Plaintiff who
13 presumably never responded. *See* Decl of Jeff Coats exh A. The car was properly towed by
14 the City of Seattle, impounded and eventually sold at auction. *See* Decl of Jeff Coats exh A,
15 exh G 10, 11, and 12 and Exh H..

16 Plaintiff has been convicted of First Degree Burglary and Unlawful Possession of a
17 Firearm. *See* Decl of Coats Exh B. He is in prison for 87 months as of last November. *See*
18 Decl of Coats Exh C. He is pro se in this matter. For context, the charge he was convicted of
19 says he had broken into a person's house and was still in it when that person came home with
20 his young kids. The person chased him out, fought him and pinned him down while the
21 police came. The plaintiff told the person there was another guy in the house so the person

22 DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
23 CAN BE GRANTED UNDER 12(B) 6 - 3

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1 drug the plaintiff around to the front of the house, kept him pinned and called the police. In
2 the plaintiff's bag the plaintiff had a stolen gun from the person's house. *See Decl of Coats*
3 *Exh C.* That is what he was doing instead of handling his car at AAMCO.

4 Plaintiff's pleadings are all handwritten so it is challenging to pull some information
5 out of them. *See Decl of Coats Exh D.* The plaintiff has handwritten motions to the court,
6 which the court has rejected due to their illegibility and faulty filing issues. *See Decl of Coats*
7 *Exh E.* An example of the poor handwriting is his sister's name, which hampers discovery.
8 It looks like it is either Laverin Gotcher or Laurien Gotcher, neither can be found. *See Decl*
9 *of Coats Exh F.*

10 The allegations in the Complaint are also challenging to understand. *See Decl of*
11 *Coats Exh D.* The caption says "Jury Trial Demand" but no fee was paid and no Jury
12 Demand was filed. It appears the claim is for "Breach of Contract, Theft, Fraud & Property
13 Loss." *See Decl of Coats Exh D*

14 But, the first paragraph of the Complaint alleges this is a Civil Rights Action." *See*
15 *Decl of Coats Exh D.* There is no contract, there never was, nothing was stolen by the
16 defendant and there is no evidence of fraud. As for civil rights there is no evidence that the
17 plaintiff's' civil rights were abused.

18 So the real issue in question is "property loss" meaning essentially, whether the
19 Defendants have a duty to protect the plaintiff's vehicle if it is in fact in their care, custody
20 and control. If so, that ended when arrangements were made with the sister, she was given
21 the keys and the car was staged for towing to her house as planned. If anyone, Plaintiff has

22 DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
23 CAN BE GRANTED UNDER 12(B) 6 -4

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1 an action against his sister but even that would probably fail because it seems he is a poor
2 communicator.

3 III. AUTHORITY AND ARGUMENT

4 Under CR 12(b)6 the court may dismiss a claim “for failure to state a claim upon
5 which relief can be granted.” *See* CR 12(b)6.
6

7 **A. Plaintiff’s Claims Against All Defendants Should Be Dismissed Pursuant** 8 **to CR 12(b)(6) Because He Can Prove No Set of Facts Consistent With** 9 **the Complaint That Would Justify Recovery Against Any of Them.**

10 A dismissal for failure to state a claim under CR 12(b)(6) is appropriate if “it appears
11 beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which
12 would entitle the plaintiff to relief.” Bravo v. Dolsen Cos., 125 Wn.2d 745, 750, 888 P.2d
13 147 (1995) (wrongful discharge case); Ottger v. Clover Park Tech. College, 84 Wn. App.
14 214, 222, 928 P.2d 1119 (1996) (breach of contract case involving allegations by students of
15 misrepresentation of course content). In this case, plaintiff can prove no set of facts which
16 would entitle him to relief against Defendants.

17 **B. Plaintiff cannot prove Breach of Contract**

18 No elements of a Breach of Contract Claim exist.

19 According to WPI, Breach of Contract requires:

20 The plaintiff, has the burden of proving each of the following
21 propositions on his claim of breach of contract:

- 22 (1) That the defendant, entered into a contract with plaintiff;
- 23 (2) That the terms of the contract included: (Here insert a
24 general statement of material terms);
- 25 (3) That Defendant breached the contract in one or more of the
26 ways claimed by plaintiff;

DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED UNDER 12(B) 6 - 5

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1 (4) That plaintiff was not in material breach of, had performed
2 or offered to perform its obligations under, was excused from
performing its obligations under the contract;

3 (5) That (here insert any condition precedent the occurrence of
4 which plaintiff must prove) had occurred;

5 (6) That plaintiff was damaged as a result of defendant's
breach.

6 If you find from your consideration of all the evidence that
7 each of these propositions has been proved, your verdict should
be for plaintiff. On the other hand, if any of these propositions
8 has not been proved, your verdict should be for defendant¹.

9 Plaintiff cannot prove any of the elements of Breach of Contract because there was no
10 contract.

11 **C. Plaintiff Cannot Prove Any Elements of Theft**

12 Theft is the action or crime of stealing, which did not occur here. A theft offense in
13 the state of Washington is classified as "theft in the first degree," which is a class B felony, if
14 the value of property (other than a firearm or motor vehicle) or services stolen exceeds
15 \$5,000, or if property of any value is taken directly from the person of another². (1) A
16 person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle. (2)
17 Theft of a motor vehicle is a class B felony³.

18 No defendant stole Plaintiff's car. It was properly impounded then sold at auction by
19 the City of Seattle after Plaintiff abandoned it.
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24 ¹ WPI 300.02 Burden of Proof on the Issues – Breach of Contract – No affirmative defense

² RCW 9A.56.030 Theft

³ RCW 9A.56.065 Theft of motor vehicle

25 DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
26 CAN BE GRANTED UNDER 12(B) 6 - 6

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1 be for (name of plaintiff) [on this claim]. On the other hand, if
2 any of these propositions have not been proved, your verdict
3 should be for (name of defendant) [on this claim].⁷
4

5 A key element is “under color of law,” which means: A[n] [person] [or] [entity] acts
6 under color of law when acting or purporting to act in the performance of official duties
7 under any state, county, or municipal law, ordinance, [or] regulation[, custom or usage].
8 [[The parties have stipulated that] [The court has found that] the defendant acted under color
9 of law.]

10 The plaintiff can prove no fact that would place the Defendants under color of law by this
11 definition.
12

13 IV. SUPPORTING EVIDENCE

- 14 1. Declaration of Chris Kim
- 15 2. Declaration of Glen Barnhart
- 16 3. Declaration of Jeff Coats with exhibits

17 V. CONCLUSION

18 Plaintiff has failed to state a claim upon which relief can be granted. Thus the Court is
19 respectfully requested to dismiss this matter with prejudice under CR 12(b)(6).
20

21 DATED: December 12, 2018

LAW OFFICES OF MARK M. MILLER

22 BY:

23 
24 JEFFREY D. COATS, WSBA # 32198

25 ⁷ WPI 340.02 Civil Rights – Individual Defendant – Burden of Proof in the Issues
26 DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED UNDER 12(B) 6 -9

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DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED UNDER 12(B) 6 - 10

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Farmers Insurance Group of Companies.

1 **DECLARATION OF SERVICE**

2 I declare that I served the foregoing DEFENDANTS' MOTION TO DISMISS FOR
3 FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED UNDER
4 12(B) 6 on the attorneys below

5 Norman J. Gotcher
6 Coyote Ridge Corrections Center
7 MSU-Camas - Unit CC08-IL
8 Inmate Norman J. Gotcher, Jr. - Doc #0000634076
9 PO Box 769
10 Connell, WA 99326
11 Pro Se Plaintiff

12 [x] by causing a full, true and correct copy thereof to be MAILED in a sealed, postage-
13 paid envelope, addressed as shown above, which is the last-known address for the
14 party's office, and deposited with the U.S. Postal Service at Bellevue, WA, on the
15 date set forth below;

16 I declare under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct.

18 Executed at Bellevue, WA on this 20th day of December, 2018.

19 
20 _____
21 Kari Beeler, Paralegal

22 DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
23 CAN BE GRANTED UNDER 12(B) 6 - 11

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

NORMAN GOTCHER, JR.,

Plaintiffs,

vs.

AAMCO TRANSMISSION
CORPORATION HEADQUARTERS OF
HORSHAM, PA# PRIOR OWNER BRIAN
O'DONNELL, AAMCO OF SEATTLE,
GLEN BARNHART, SHOP MANAGER
ET AL,

Defendants.

No. 18-2-06128-8 SEA

DECLARATION OF CHRIS KIM

1, **Chris Kim**, declare and state as follows:

1. I am over age 18 and competent to testify to the following facts:
2. I am the current owner of the AAMCO of Seattle located at 2107 23rd Avenue

S, Seattle, WA 98144 (AAMCO).

3. I took over the AAMCO shop in January 2016 and had hired Glen Barnhart to

DECLARATION OF CHRIS KIM- 1

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1 run it. He dealt with Mr. Gotcher.

2 I declare under penalty of perjury under the laws of the State of Washington, that the
3 foregoing is true and correct.

4 Executed at DECEMBER on this 12 day of 2018 12/12/2018.

5 
6 Chris Kim

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DECLARATION OF CHRIS KIM- 2

Law Offices of Rodney D. Hollenbeck
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

NORMAN GOTCHER, JR.,
Plaintiffs,

vs.

AAMCO TRANSMISSION
CORPORATION HEADQUARTERS OF
HORSHAM. PA# PRIOR OWNER BRIAN
O'DONNELL, AAMCO OF SEATTLE,
GLEN BARNHART, SHOP MANAGER
ET AL,
Defendants.

No. 18-2-06128-8 SEA

**DECLARATION OF GLEN N
BARNHART**

I, Jeffrey D. Coats, declare and state as follows:

1. I am over age 18 and competent to testify to the following facts:
 2. On or about January 2016 I was employed at the AAMCO Shop (AAMCO) located at 2107 23rd Ave. S., Seattle.
 3. On or about January 2016 Norman Gotcher brought his 2000 Chrysler 300 to
- DECLARATION OF GLEN BARNHART- 1

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1 the AAMCO shop.

2
3 4, I recall Norman Gotcher's vehicle having a "bad engine" and a "bad
4 transmission" specifically it had a blown head gasket.

5 5. The estimated value of the car at \$2,000 was far less than the estimated cost
6 of repair.

7 6. Either way, Plaintiff did not have the money to afford the repairs so no
8 repairs were arranged or done so no agreement was ever reached as to any repairs.

9 7. Over the ensuing few months after that initial contact the plaintiff was
10 jailed and arrangements were eventually made to get the car out of the shop.

1 8. I gave Norman Gotcher's sister the keys to his car and the name along with
1 estimated cost of towing by Brian's Towing who AAMCO used at the time for towing
1 services. However, even though she said she would, Norman Gotcher's sister never made
2 arrangements to have the vehicle towed.

1 9. Thinking the sister had made arrangements to tow the vehicle I placed it
3 across the street where it sat for an estimated two weeks then it was gone.

1 I declare under penalty of perjury under the laws of the State of Washington, that the
5 foregoing is true and correct.

1 Executed at 10:22 AM on this 13th day of December 12/13/2018.
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Glen Barnhart

DECLARATION OF GLEN BARNHART-2

Law Offices of Rodney D. Hollenbeck
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

NORMAN GOTCHER, JR.,

Plaintiffs,

vs.

AAMCO TRANSMISSION
CORPORATION HEADQUARTERS OF
HORSHAM. PA# PRIOR OWNER BRIAN
O'DONNELL, AAMCO OF SEATTLE,
GLEN BARNHART, SHOP MANAGER
ET AL,

Defendants.

No. 18-2-06128-8 SEA

**DECLARATION OF JEFFREY D.
COATS**

I, **Jeffrey D. Coats**, declare and state as follows:

1. I am over age 18 and competent to testify to the following facts:
2. Attached here to as Exhibit A is a true and correct copy of the letter form the City of Seattle to the Plaintiff regarding the disposition of his vehicle;
3. Attached here to as Exhibit B is a true and correct copy of the Information on one of Plaintiff's Criminal matter for which he is currently incarcerated.

DECLARATION OF JEFFREY D. COATS- 1

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1 4. Attached hereto as Exhibit C is a true and correct copy of The Judgment and
2 Sentence for Plaintiff's Felony for which he is currently incarcerated.

3 5. Attached hereto as Exhibit D is Plaintiff's "Complaint" in this matter.

4 6. Attached hereto as Exhibit E is the Court's denial of a multitude of Plaintiff's
5 Motions based on their illegibility.

6 7. Attached hereto as Exhibit F is a true and correct copy of a page from
7 Plaintiff's RFA to Defendant showing the illegibility of his sister's name.

8 8. Attached hereto as Exhibit G is a true and correct copy of Defendant's
9 Requests for Admission to Plaintiff, see responses 10, 11, and 12.

10 9. Attached hereto as Exhibit H is a true and correct copy of Plaintiff's "To
11 Negotiate a Settlement Agreement"

12 I declare under penalty of perjury under the laws of the State of Washington, that the
13 foregoing is true and correct.

14 Executed at Bellevue on this 18th day of December 2018.

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19 _____
Jeffrey D. Coats

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DECLARATION OF JEFFREY D. COATS- 2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

NORMAN GOTCHER, JR.,

Plaintiffs,

vs.

AAMCO TRANSMISSION CORPORATION
HEADQUARTERS OF HORSHAM. PA# PRIOR
OWNER BRIAN O'DONNELL, AAMCO OF
SEATTLE, GLEN BARNHART, SHOP
MANAGER ET AL,

Defendants.

Case No.: 18-2-06128-8 SEA

DEFENDANT'S REPLY TO
PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS

Plaintiff has failed to provide any law or argument to refute Defendants' Motion to Dismiss. Therefore Defendants' respectfully request that Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted be granted.

1. Plaintiff's Complaint About Not Getting Phone Recordings is Irrelevant

It is extremely difficult to read Plaintiff's handwriting but I will respond to what it

DEFENDANT'S REPLY TO PLAINTIFF'S
RESPONSE TO DEFENDANT'S MOTION TO DISMISS - 1

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1 appears to say. Plaintiff complains he is unable to get a CD of a phone conversation he had
2 with his sister about this matter. Proof of a phone conversation wherein Plaintiff and his
3 sister agreed that my client's would move his car is not dispositive as to whether my clients
4 had any legal obligation to do so. At best this evidence, if it exists, could only prove that the
5 plaintiff and his sister had a conversations about the subject, which is irrelevant as to proving
6 my clients had any duty. Anyway, if this evidence is basic proof of plaintiff's case he
7 should have obtained it before filing the lawsuit. Alternatively, he could have either had her
8 sign an affidavit or provided a sworn written statement. He apparently did not and has
9 produced no evidence to support his claims.

10 **2. Plaintiff Establishes No Basis for Liability "Some Kind of Responsibility"**

11 In Paragraph 5. of Plaintiff's Response Plaintiff alleges that simply because
12 Defendants had possession of his vehicle at some point they have "Some kind of
13 Responsibility." This is precisely the point of the 12(b)(6) motion "some kind of
14 responsibility" fails to state any kind of claim upon which relief can be granted. Plaintiff
15 must establish a duty, breach, damages and causation and/or prove another of his claims of
16 theft, violation of his rights or whatever else he is claiming. He provides no evidence or
17 legal basis for his claims.

18 **3. Plaintiff Believes He Has a Right to Equal Protection Under the Law but**
19 **States No Fact or Law Underwhich He Has Not Been Given Equal Protection**

20 Plaintiff would have to establish that Defendants had a duty to provide him with equal
21 protection and that others were afforded a protection that he was not equally provided. No
22 fact or duty exists in this regard to support this claim. None was asserted in his Response. In
23 fact, Plaintiff's Response states under numbered paragraph 6., "This Court does not have
24 authority to rule in this matter."

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7. Argument With No Legal Citation or Factual Support

Plaintiff's response contains no explanation of a legal duty or obligation and provides no evidence that would support the allegations contained in the Complaint.

8. Plaintiff's Attempts to Have Others Produce Evidence Fail

Paragraph 17. of Plaintiff's Response references alleged phone conversations with Defendants while Plaintiff was in King County Jail will prove the Plaintiff's case. The discovery cutoff has passed, the trial is set for March 4, 2019 and no evidence has been produced to support such claims. The Court does have Defendant's sworn declarations on these issues.

9. Plaintiff Has Had A Year to Present Any Evidence To Support His Claims And Has Failed to Meet Every Any Deadline

Plaintiff has responded with the same allegations that fail to state a claim upon which relief can be granted but has missed all court ordered deadlines. He has not provided a single witness disclosure, a witness and exhibit list, missed the readiness date and Joint Statement of Evidence. So there is not a scintilla of evidence that can be presented to support any of his claims and no time left to do so.

Conclusion

For the reasons stated in the Defendants' Motion to Dismiss and this Reply Defendants respectfully request the Court Grant their Motion to Dismiss Plaintiff's Claims for Failure to State a Claim Upon Which Relief Can Be Granted.

DATED: February 21, 2019

LAW OFFICES OF MARK M. MILLER

BY:


JEFFREY D. COATS, WSBA # 32198
Attorney for Defendants

DEFENDANT'S REPLY TO PLAINTIFF'S
RESPONSE TO DEFENDANT'S MOTION TO DISMISS - 4

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1 DECLARATION OF SERVICE

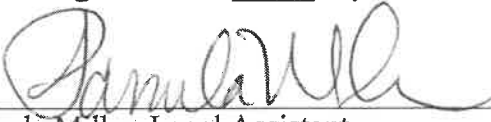
2 I declare that I served the foregoing DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE
3 TO DEFENDANT'S MOTION TO DISMISS on the attorneys below

4 Norman J. Gotcher
5 Coyote Ridge Corrections Center
6 MSU-Camas - Unit CC08-IL
7 Inmate Norman J. Gotcher, Jr. - Doc #0000634076
8 PO Box 769
9 Connell, WA 99326

10 [X] by causing a full, true and correct copy thereof to be MAILED in a sealed, postage-
11 paid envelope, addressed as shown above, which is the last-known address for the
12 party's office, and deposited with the U.S. Postal Service at Spokane, WA, on the
13 date set forth below;

14 I declare under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 Executed at Spokane, Washington on this 22nd day of February, 2019.

17 
18 _____
19 Pamela Miller, Legal Assistant

APPENDIX II

FILED
2019 DEC 17
KING COUNTY
SUPERIOR COURT CLERK

CASE #: 18-2-06128-8 SEA

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

NORMAN GOTCHER,

Plaintiff/Petitioner,

vs.

AAMCO TRANSMISSION CORP

Defendant/Respondent.

No. 18-2-06128-8 SEA

Letter from the court to plaintiff dated December 17, 2019.

ORIGINAL

*Superior Court of the State of Washington
for the County of King*

*Judge Roger Rogoff
Dept. 47*

*King County Courthouse
516 Third Avenue, Rm. C-203
Seattle, WA 98104*

December 17, 2019

Norman Gotcher, Jr., DOC #634076
MSU – Camas Unit: CC-20-16
Coyote Ridge Correction Center
P.O. Box 769
Connell, WA 99326

RE: Gotcher v. AAMCO Transmission Corp, 18-2-06128-8 SEA

Dear Mr. Gotcher:

This court is in receipt of the numerous pleadings and correspondence you have sent to us. All of the letters and pleadings are filed in the Superior Court case file. Based on the letter and Mandate entered by the Supreme Court of Washington on September 4, 2019, your motion for expenditure of public funds was denied. This court will not be moving forward with any motions regarding transmission of clerk's papers at this time.

Sincerely,



Lisa A. MacMillan
Bailiff to Judge Rogoff

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6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR THE COUNTY OF KING

9 NORMAN GOTCHER, JR.

10 Plaintiff(s),

11 vs.

12
13 AAMCO TRANSMISSION
14 CORPORATION HEADQUARTERS OF
15 HORSHAM, PA# PRIOR OWNER BRIAN
16 O'DONNELL, AAMCO OF SEATTLE,
17 GLEN BARNHART, SHOP MANAGER
18 ET AL

19 Defendant(s).

No. 18-2-06128-8 SEA

~~(PROPOSED)~~
20 ORDER GRANTING
21 DEFENDANTS' MOTION FOR
22 SUMMARY JUDGMENT UNDER
23 12(b) (6)

(Clerk's Action Required)

18 THIS MATTER having come on for hearing before the undersigned Judge of the
19 above-entitled Court on the Motion of the defendants for summary judgment against
20 plaintiff. Defendants, AAMCO TRANSMISSION CORPORATION, AAMCO OF
21 SEATTLE, BRIAN O'DONNELL, AND GLEN BARNHART, were present through their
22 counsel, Jeffrey D. Coats. The Court, having considered the following:

- 24 1. Defendant's Motion for Summary Judgment Against Plaintiff;

25 ORDER - 1
26

Law Offices of Mark M. Miller
Mailing Address: PO Box 258829, Oklahoma City, OK 73125-8829
Office Location: 15509 SE 30th Place, Suite 201, Bellevue, WA 98007
Telephone (425) 644-4440
Facsimile (425) 747-8338
Employees of the Farmers Insurance Exchange, a Member of the
Farmers Insurance Group of Companies.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

NORMAN GOTCHER, JR.,)	
)	
)	No. 18-2-06128-8 SEA
)	
vs.	)	ORDER ON MOTION
)	
AAMCO TRANSMISSION CORP., et al.)	
)	
)	
)	
)	
)	

THIS MATTER having come on for multiple hearings before the undersigned Judge of the above-entitled Court on the Plaintiff's Motion for Summary Judgment set for March 22, 2019 and Plaintiff's Relief from Judgment or Order set for April 1, 2019.

The Court having considered the following documents:

1. Note for Motion calendaring Plaintiff's Motion Requesting Summary Judgment with hearing date of March 22, 2019, received by the Court on March 8, 2019.
2. Correspondence Letter from Norman Gotcher, Jr., dated March 3, 2019, received by the Court on March 8, 2019.
3. Plaintiff's Motion Requesting Summary Judgment, received by the Court on March 8, 2019.

- 1 4. Plaintiff's Declaration Requesting Summary Judgment, received by the Court on
2 March 8, 2019.
- 3 5. Declaration of Norman Gotcher, Jr., in Support of Motion for Summary Judgment,
4 received by the Court on March 8, 2019.
- 5 6. Motion Requesting Extension of Forty-Five Days, received by the Court on March
6 8, 2019.
- 7 7. Proposed Order Granting Plaintiff's Motion for Summary Judgment, received by
8 the Court on March 8, 2019.
- 9 8. Plaintiff's Relief from Judgment or Order, received the Court on March 18, 2019.
- 10 9. Declaration of Norman Gotcher, Jr., received by the Court on March 18, 2019.
- 11 10. Proposed Order Granting Plaintiff's Summary Judgment Motion, received by the
12 Court on March 18, 2019.
- 13 11. Note for Motion calendaring Relief from Judgment or Order with a hearing date of
14 April 1, 2019, received by the Court on March 26, 2019.
- 15 12. Correspondence from Plaintiff dated March 20, 2019, received by the Court on
16 March 26, 2019.
- 17 13. Plaintiff's Responsive Pleadings and Objections to Defendant's Response to
18 Plaintiff's Motion, received by the Court on April 1, 2019.
- 19 14. Proposed Order Dismissing Defendant's Response to Plaintiff's Motion, received
20 by the Court on April 1, 2019.
- 21 15. Defendant's Response to Plaintiff's Motion, received by the Court on March 19,
22 2019.
- 23
- 24

1 16. Proposed Order Denying Plaintiff's Motion, received by the Court on March 19,
2 2019.


3 17. The other pleadings and filing in this cause.

4 This Court finds good cause to deny the following relief.

5 Therefore, IT HEREBY ORDERED that:

- 6 1. Plaintiff's Motion for Summary Judgment set for March 22, 2019 and Plaintiff's
7 Motion for Relief from Judgment or Order set for April 1, 2019, are hereby
8 DENIED because this Court dismissed the above-entitled matter on March 1,
9 2019 [see Order Granting Defendants' Motion for Summary Judgment Under
10 12(b)(6)]. The Motion for Relief, pursuant to CR 59, is untimely.
- 11 2. Plaintiff's claims against defendant AAMCO Transmissions Corporation,
12 AAMCO of Seattle, Brian O'Donnell and Glenn Barnhart remain DISMISSED
13 WITH PREJUDICE.
- 14 3. If Plaintiff seeks further relief, such relief must come via the Court of Appeals.

15
16 DATED this 10th day of April, 2019.

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18 
19 _____
20 JUDGE ROGER ROGOFF

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SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

NORMAN GOTCHER)
)
 Plaintiff,)
)
 vs.)
)
 AAMCO TRANSMISSION, et al.,)
)
 Defendant.)

NO. 18-2-06128-8 SEA
ORDER ON CIVIL MOTION

The above entitled court having received a written request from Plaintiff, who currently is incarcerated, to continue the Defendant's Motion to Dismiss for 45 days. Defendant filed a response opposing any length of continuance and requested the case be dismissed.

IT IS HEREBY ORDERED that Plaintiff's request to continue the motion is granted. The hearing scheduled for January 25, 2019 at 9 AM is continued to March 1, 2019 at 9 AM. Plaintiff shall make arrangements to appear via phone for the next scheduled hearing.

DATED: January 24, 2019



JUDGE ROGER ROGOFF

There will be no further continuances of this motion

Copies provided to:

Norman Gotcher, Plaintiff, via US Mail
Jeffrey Coats, Attorney for Defendant via email

Judge Roger Rogoff, Dept 47
King County Superior Court
516 Third Avenue #W813
Seattle, WA 98104

APPENDIX III

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

May 3, 2019

Jeffrey D Coats
Law Offices of Mark M. Miller
15500 SE 30th PI Ste 201
Bellevue, WA 98007-6347
jeffrey.coats@farmersinsurance.com

Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I
Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

RE: King County No. 18-2-06128-8 SEA

Receipt is acknowledged of the notice of appeal filed in King County Superior Court on May 2, 2019, without payment of the filing fee. In view of appellant's failure to pay a filing fee, or, in the alternative, to provide this court with an order of indigency in proper form, a court's motion to dismiss has been set for **Friday, May 31, 2019, at 2:30 p.m.** Appellant has the permission of the court to seek an order of indigency in the trial court even if the time period for filing the notice of appeal has passed. RAP 18.8(a).

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

khn

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
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May 3, 2019

Jeffrey D Coats
Law Offices of Mark M. Miller
15500 SE 30th PI Ste 201
Bellevue, WA 98007-6347
jeffrey.coats@farmersinsurance.com

Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The records before the Court indicate that proof of service of the notice of appeal and the order or judgment appealed from is not of record as required by RAP 5.4(b) and RAP 5.3(a).

If the proof of service of the notice of appeal and the order or judgment appealed from is not filed within 10 days, a court's motion to dismiss and/or impose sanctions in accordance with RAP 18.9 is set for **Friday, May 31, 2019, at 2:30 p.m.** The Court's motion will be stricken if the proof of service of the notice of appeal and the order or judgment appealed from or a motion for extension of time is filed on or before **May 13, 2019.**

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

khn

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
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May 30, 2019

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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on May 30, 2019, regarding court's motion to dismiss for failure to pay the filing fee set on Friday, May 31, 2019:

NOTATION RULING
Gotcher, Jr. v. AAMCO Transmission Corp.
No. 79882-1-I
May 30, 2019

A court's motion to dismiss for failure to pay the filing fee is set on Friday, May 31, 2019. The hearing is stricken. Based on the trial court's prior determination that appellant Gotcher is indigent, the filing fee is waived.

Gotcher's case involves a dispute over his vehicle. Because this is a civil case, unless the Washington Supreme Court enters an order for the expenditure of public funds, Gotcher will be required to pay for preparation of the record for his appeal.

To the extent Gotcher argues that his ability to file a brief is limited by the Department of Corrections failure to allow him access to the institution law library and other resources, his remedy is to pursue the problem with Columbia Legal Services (as he states he is trying to do), or file a personal restraint petition under Title 16 to the Rules of Appellate Procedure.

Page 2 of 2

79882-1-I, Norman Gotcher, Jr. v. AAMCO Transmission Corp., et al.

May 30, 2019

The requirements for the content of appellant's brief are set out in RAP 10.3.

Mary S. Neel
Commissioner

Sincerely,

A handwritten signature in black ink, appearing to read "R.D. Johnson", written over a horizontal line.

Richard D. Johnson
Court Administrator/Clerk

khn

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
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July 22, 2019

Nathaniel Justin Ree Smith
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1325 4th Ave Ste 2000
Seattle, WA 98101-2570
smith@sohalang.com

Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

King County No. 18-2-06128-8 SEA

Supreme Court No. 97448-9

Counsel:

A notice of appeal was filed in the above case on May 2, 2019. A motion for an order of indigency and order of indigency was also filed and has been transmitted to the Supreme Court for determination pursuant to RAP 15.2.

Until the motion for expenditure of public funds has been decided by the Supreme Court, all due dates in the above case are suspended. If the motion for expenditure of public funds is granted, the Court will inform the parties of the due dates for perfecting the appeal. If the motion for expenditure of public funds is denied, the filing fee will be due within 15 days of the denial of the motion and if not paid, a court's motion to dismiss the appeal will be set.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

khn

c: King County Clerk

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
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September 5, 2019

Nathaniel Justin Ree Smith
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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents
King County No. 18-2-06128-8 SEA

Counsel:

The Court's records indicate the clerk's papers are not of record in this court. Please contact the trial court immediately, to ensure the timely transmittal of the record on appeal.

Please advise the court in writing regarding the status of the clerk's papers within 10 days of the date of this letter i.e. September 16, 2019.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

c: King County Clerk's Papers

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
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September 16, 2019

Nathaniel Justin Ree Smith
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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The Court's records indicate the clerks papers are not of record in this court.

If the is not filed within 10 days, a court's motion to impose sanctions and/or dismiss in accordance with RAP 18.9 is set for Friday, September 27, 2019, at 10:30 a.m. The court's motion will be stricken if the clerks papers or a motion for an extension of time is filed on or before September 23, 2019.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

HCL

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
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September 25, 2019

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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on September 25, 2019:

A court's motion to dismiss is set on September 27, 2019 for failure to file the clerk's papers. The hearing is stricken.

On May 15, 2019, Gotcher filed a designation of clerk's papers. On June 3, 2019, the trial court rejected the designation for failure to comply with RAP 9.6(b)(2), noting that the designation did not list the title of the pleadings and the subnumber and file date of each requested document.

On September 9, 2019, the Supreme Court denied the expenditure of public funds, and on September 24, 2019, the Clerk informed Gotcher that his motion for reconsideration would be placed in the file without action.

On September 19, 2019, Gotcher inquired with the trial court regarding why the clerk's papers have not been transmitted. I note that since June 3 notice rejecting the designation, Gotcher apparently has not filed a corrected designation of clerk's papers.

The court's motion to dismiss is continued to October 18, 2019. Review will be dismissed unless Gotcher has filed in the trial court a designation of clerk's papers that complies with RAP 9.6. Gotcher must also file a copy in this court.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

HCL

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
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September 26, 2019

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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on September 26, 2019, regarding Appellant's Motion for Extension of Time to File Clerk's Papers until November 4, 2019:

Yesterday, September 25, 2019, I continued the court's motion to dismiss to October 18, 2019. In view of Gotcher's motion for an extension, I will continue the court's motion to dismiss to November 8, 2019 at 2:30 p.m. No further extensions will be granted.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

HCL

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
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November 1, 2019

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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on October 30, 2019, regarding the Designation of Clerk's Papers and Clerk's Papers:

A court's motion to dismiss for failure to file the clerk's papers is set for consideration on November 8, 2019. The matter is continued to December 6, 2019.

As set out in prior rulings, this is a civil case involving a dispute over a vehicle. The trial court has found that Gotcher is indigent and ordered that he may be entitled to preparation of parts of the record at public expense. The decision of whether to allow the expenditure of public funds is made by the Washington Supreme Court. On September 9, 2019, the Supreme Court denied Gotcher's request for the expenditure of public funds. Thus, if this appeal is to go forward, Gotcher must provide the record for his appeal at his own expense.

Gotcher initially filed a designation of clerk's papers in the trial court on May 15, 2019. On June 3, 2019, the superior court rejected the designation for failure to comply with RAP 9.6(b)(2), noting that the designation did not list the title of the pleadings and the subnumber and file date of each requested document.

In recent filings in this court, Gotcher states that he has filed a second designation of clerk's papers in the trial court. He also filed a copy of this designation in this court. As of today, the superior court docket shows that Gotcher has filed an inquiry regarding his designation of clerk's papers, but it does not show the second designation as filed.

In addition, the copy of the designation filed in this court again does not appear to comply with RAP 9.6. Gotcher has asked the superior court for information regarding how to identify subnumbers for the documents he wants. Subnumbers and the titles of documents are available on King County Superior Court Electronic Court Records.

The court's motion to dismiss is continued to December 6, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Johnson', with a long horizontal flourish extending to the right.

Richard D. Johnson
Court Administrator/Clerk

HCL

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
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December 6, 2019

Nathaniel Justin Ree Smith
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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on December 5, 2019, regarding Appellant's Motion to Extend Time to File Clerk's Papers:

Extension granted to December 27, 2019. The court's motion set on December 6, 2019 is stricken.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

HCL

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
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January 21, 2020

Nathaniel Justin Ree Smith
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Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 79882-1-I

Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on January 3, 2020, regarding Appellant's Motion for Stay:

Gotcher's motion for a stay is denied, as it primarily contains arguments on the merits of the appeal. The clerk's papers were due December 27, 2019. I will grant an extension to file the clerk's papers to January 31, 2020.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

HCL

APPENDIX IV

THE SUPREME COURT

STATE OF WASHINGTON

SUSAN L. CARLSON
SUPREME COURT CLERK

ERIN L. LENNON
DEPUTY CLERK
CHIEF STAFF ATTORNEY



TEMPLE OF JUSTICE

P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

July 19, 2019

Norman Gotcher, Jr.
#634076
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

Hon. Richard Johnson, Clerk (**sent by e-mail only**)
Division I. Court of Appeals
One Union Square
600 University Street
Seattle, WA 98101

Nathaniel Justin Ree Smith (**sent by e-mail only**)
Soha & Lang PS
1325 4th Avenue, Suite 2000
Seattle, WA 98101-2570

Hon. Barbara Miner, Clerk
King County Superior Court
516 3rd Avenue, Room E609
Seattle, WA 98104-2361

Re: Supreme Court No. 97448-9 - Norman Gotcher, Jr. v. AAMCO of Seattle, et al.
Court of Appeals No. 79882-1-I
King County Superior Court No. 18-2-06128-8 SEA

Clerks, Counsel and Mr. Gotcher:

On July 18, 2019, this Court received from the clerk of the trial court a copy of the "ORDER OF INDIGENCY" filed on May 28, 2019, in the above-referenced superior court case. The matter has been assigned the above-referenced Supreme Court cause number.

The clerk of the trial court also provided this Court a copy of the "Motion for Order of Indigency."

Pursuant to RAP 15.2(c), in this type of case, the trial court determines the indigency of a party seeking review by entering findings of indigency, but then the Supreme Court makes the determination whether an order of indigency will be entered. See also RAP 15.2(c). Therefore, the order has been treated as findings of indigency.

RAP 15.2(d) provides that if findings of indigency are transmitted to the Supreme Court, the Supreme Court will determine whether an order of indigency should be entered. The rule specifies that the Supreme Court considers the following factors in making its determination: (1) whether the party is seeking review in good faith; (2) that an issue of probable merit is presented, and (3) that the party is entitled to review partially or wholly at public expense. See RAP 15.2(d). The findings of indigency will be considered by the Court as a motion for expenditure of public funds.



The motion for expenditure of public funds is set for hearing by a Department of this Court on the Court's September 3, 2019, Motion Calendar. The matter will be decided without oral argument. RAP 15.2(d).

Pursuant to RAP 15.2, by August 5, 2019, Mr. Gotcher, the appellant, should provide this Court with the following:

1. A statement of the expenses he wants waived or provided at public expense;
2. A description of the nature of the case;
3. A description of the issues he wishes to raise on review;
4. A statement that the review is sought in good faith; and
5. A demonstration of probable merit and a constitutional right to review partially or wholly at public expense.

Correspondence from this Court will be sent to the Petitioner via U.S. mail. Correspondence from this Court will be sent to counsel for the Respondent by e-mail attachment, not by regular mail. This office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory.

Sincerely,



Erin L. Lennon
Supreme Court Deputy Clerk

ELL:clm

THE SUPREME COURT OF WASHINGTON

NORMAN GOTCHER JR.,	)	No. 97448-9
)	
Appellant,	)	ORDER
)	
v.	)	Court of Appeals
	)	No. 79882-1-I
AAMCO OF SEATTLE, et al.,)	
	)	King County Superior Court
Respondents.	)	No. 18-2-06128-8 SEA
)	
_____)	

Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins and Gordon McCloud, considered this matter at its September 3, 2019, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Appellant's motion for expenditure of public funds is denied.

DATED at Olympia, Washington, this 4th day of September, 2019.

For the Court



CHIEF JUSTICE

SUSAN L. CARLSON
SUPREME COURT CLERK

ERIN L. LENNON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT

STATE OF WASHINGTON



TEMPLE OF JUSTICE

P.O. BOX 40929
OLYMPIA, WA 98504-0929

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September 24, 2019

LETTER SENT BY E-MAIL

Norman Gotcher, Jr. (sent by U. S. mail only)
#634076
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

Hon. Richard D. Johnson, Clerk
Court of Appeals, Division I
600 University Street
One Union Square
Seattle, WA 98101-1176

Nathaniel Justin Ree Smith
Soha & Lang PS
1325 4th Avenue, Suite 2000
Seattle, WA 98101-2570

Re: Supreme Court No. 97448-9 - Norman Gotcher, Jr. v. AAMCO of Seattle, et al.
Court of Appeals No. 79882-1-I
King County Superior Court No. 18-2-06128-8 SEA

Clerk, Counsel and Mr. Gotcher:

On September 23, 2019, the Court received Mr. Gotcher's "MOTION FOR RECONSIDERATION", which seeks reconsideration of the Court's decision on his motion for public expenditure.

It is noted that the Court's order reflects the unanimous decision of five of the justices, which constitutes a majority of this Court.

In regard to the request for reconsideration, the Rules of Appellate Procedure (RAP) do not provide for any further review of the Supreme Court's denial of your motion for public expenditure. In addition, the Court does not provide reasons for its denial of a motion for public expenditure. As indicated in the initial letter sent to the parties by this office, the Court considers the following factors listed in RAP 15.2(d) when deciding a motion for public expenditure:

- (1) whether the party is seeking review in good faith;
- (2) that an issue of probable merit is presented, and
- (3) that the party is entitled to review partially or wholly at public expense.

Therefore, it is not solely an issue of whether the party is indigent, but also whether the party meets the factors listed. Presumably, the Court's denial of the motion for public expenditure indicates that the Court found that the factors listed above were not met in this case.



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No. 97448-9
September 24, 2019

No further action can be taken as to the motion for public expenditure and the file has been closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan L. Carlson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Susan L. Carlson
Supreme Court Clerk

SLC:bw

APPENDIX B

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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600 University Street
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February 20, 2020

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CASE #: 79882-1-1
Norman Gotcher, Jr., Appellant v. AAMCO Transmission Corp., et al. Respondents

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on February 14, 2020, regarding Appellant's Second Motion for Stay and Respondent's Motion to Dismiss:

In this civil case, plaintiff Norman Gotcher appeals a March 1, 2019 trial court order that dismissed his claims on summary judgment. As of this ruling (February 13, 2020), Gotcher has not filed the record on review, despite multiple extensions granted for him to do so. On January 31, 2020, Gotcher filed a "second" motion for stay under RAP 8.1(b)(3). AAMCO respondents filed a motion to dismiss and opposition to the motion for stay. As explained below, the second motion for stay is denied, and Gotcher will have one last opportunity and extension of the time to file the clerk's papers, including payment for the record, until March 13, 2020. If the clerk's papers are not filed by then, this case will be dismissed without further notice of this Court.

The trial court dismissed Gotcher's claims on summary judgment as not supported by any facts. The record has not been filed because Gotcher has not paid for it, insisting that the public should pay for it. On September 4, 2019, the Supreme Court denied Gotcher's request for expenditure of public funds for this appeal. On September 24, 2019, the Supreme Court denied Gotcher's motion for reconsideration of that denial, explaining that the denial was a unanimous decision by five justices and presumably reflects the Court's decision that Gotcher's appeal does not meet RAP 15.2(d) (party is seeking review in good faith, presents an issue of probable merit, and is entitled to review at public expense).

By ruling of September 25, 2019, Commissioner Mary Neel of this Court granted an extension of the time for Gotcher to file a proper designation of clerk's papers with payment for the record in compliance with RAP 9.6. The September 25 ruling warned him that review would be dismissed if he failed to do so. By ruling of September 26, 2019, Commissioner Neel granted

Gotcher's motion for extension until November 8, 2019, stating that no further extension would be granted. By ruling of October 30, 2019, Commissioner Neel again gave Gotcher an opportunity to comply and continued the Court's motion to dismiss until December 6, 2019. By ruling of December 5, 2019, Commissioner Neel again granted Gotcher's motion for extension and continued the Court's motion to dismiss until December 27, 2019. By ruling of January 3, 2020, Commissioner Neel denied Gotcher's motion for a stay but granted a further extension of the time for him to file the record until January 31, 2020. On January 31, 2020, Gotcher filed a second motion for stay. On February 12, 2020, AAMCO respondents filed a motion to dismiss and opposition to Gotcher's second motion for stay. AAMCO respondents point out that even after the Supreme Court denied Gotcher's request for expenditure of public funds, Gotcher has filed documents in the trial court, demanding that the court prepare and transmit the record at no expense to him.

Gotcher requests a stay under RAP 8.1(b)(3), which relates to a stay of enforcement of a trial court decision. But the trial court dismissed his claims on summary judgment, so there appears no trial court order for this Court to stay. Rather, Gotcher appears to seek a stay of *this appeal* "until [he] is released from prison and can financially pursue litigation." Second Motion for Stay at 7. He essentially requests an indefinite delay. He presents no basis for this Court to grant such relief, particularly when this Court has granted him multiple extensions to pursue this appeal. His second motion for stay is denied. In light of the multiple extensions already granted, no further delay is appropriate. Gotcher is given one last extension of the time to file the clerk's papers, including payment for the record, until March 13, 2020. If Gotcher fails to file the clerk's papers by March 13, 2020, this case will be dismissed without further notice of this Court.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Johnson', with a long horizontal flourish extending to the right.

Richard D. Johnson
Court Administrator/Clerk

HCL

APPENDIX C

NO. 79882-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

NORMAN GOTCHER, JR.,

Appellant

v.

AAMCO TRANSMISSION CORP., et al.,

Respondents,

**RESPONDENTS'/DEFENDANTS' OPPOSITION TO
APPELLANT'S/PLAINTIFF'S MOTION TO MODIFY
COMMISSIONER'S FEBRUARY 14, 2020 NOTATION RULING**

Nathaniel J.R. Smith, WSBA # 28302
Attorneys for Defendants/Respondents
AAMCO Transmission Headquarters of
Horsham, PA#, Brian O'Donnell, AAMCO
of Seattle, Glen Barnhart

SOHA & LANG, P.S.
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A. IDENTITY OF RESPONDENTS

Defendants/Respondents are AAMCO Transmission Headquarters of Horsham, PA#, Brian O'Donnell, AAMCO of Seattle, and Glen Barnhart.

B. DECISION BELOW

On February 14, 2020, Commissioner Masako Kanazawa entered a notation ruling giving plaintiff/appellant Norman Gotcher

one last extension of the time to file the clerk's papers, including payment for the record, until March 13, 2020. If Gotcher fails to file the clerk's papers by March 13, 2020, this case will be dismissed without further notice of this Court.

Counsel for Respondents/Defendants has been advised that this Court is treating plaintiff/appellant Gotcher's March 1 "Notice of Discretionary Review to Court of Appeals or Supreme Court Under [Rule 5.3(b)]" as a motion to modify the Commissioner's February 14 notation ruling. Defendants/Respondents oppose Gotcher's motion to modify.

As the Commissioner's notation ruling details, this Court has been extraordinarily patient with plaintiff, but plaintiff's appeal has been pending for nearly a year, and there is no indication that plaintiff has taken steps to have the Clerk's Papers generated. To the contrary, he continues to dispute the Supreme Court's decision that he must pay for the Clerk's Papers, when that decision is final and not subject to review or

reconsideration. This Court should deny the motion to modify, and dismiss the appeal, because the March 13 deadline passed without the Clerk's Papers being transmitted to this court.

C. ISSUE PRESENTED FOR REVIEW

Whether the Commissioner correctly denied plaintiff's motion for an open-ended stay of the appeal until he is out of prison, and correctly determined that plaintiff's appeal should be dismissed if March 13, 2020, passed without plaintiff having provided the Clerk's Papers to this Court?

D. FACTS RELEVANT TO OPPOSITION

On February 12, Defendants/Respondents filed a combined motion to dismiss the appeal and opposition to plaintiff's January 27, 2020, "Second Request of Motion for Stay of Proceedings: RAP 8.1(b)(3)." Defendants/Respondents moved to dismiss the appeal by plaintiff Gotcher because, months after filing his notice of appeal, and after numerous extensions granted by this Court, he had failed to prosecute this appeal. Defendants/Respondents also sought denial of plaintiff's January 27, 2020, "Second Request of Motion for Stay of Proceedings: RAP 8.1(b)(3)" because he had not met the standard for a stay.

Defendants/Respondents' motion to dismiss contains a detailed recitation of the background to date, and all of the many extensions plaintiff has already been granted. For the sake of efficiency,

Defendants/Respondents do not repeat that background here, but instead incorporate their motion to dismiss and its Appendices by reference here.

On February 14, 2020, Commissioner Kanazawa denied plaintiff's motion to stay, and gave him one final chance to provide the Clerk's Papers to this Court so that the appeal could finally proceed. This February 14 notation ruling was conveyed to the parties in a February 20, 2020 letter from the Court Administrator/Clerk.

Rather than providing the Clerk's Papers by the final March 13 deadline, plaintiff filed a pleading styled as a "Notice of Discretionary Review to Court of Appeals or Supreme Court Under [Rule 5.3(b)]". In a March 18, 2020 letter, the Supreme Court denied discretionary review of the February 14 notation ruling. This Court is treating plaintiff's unique pleading as a motion to modify the February 14 ruling.

Plaintiff's handwritten pleading is somewhat difficult to follow, but ultimately he appears to seek more time to file a motion for discretionary review to this Court or the Supreme Court regarding the February 14 notation ruling. He also disputes trial court rulings, but of course disagreement with trial court rulings could only be raised in an appellate brief, after his Clerk's Papers have been provided to this Court.

Plaintiff's current pleading asserts that it is this Court's burden to tell the trial court what portions of the record are needed for pursuit of his

appeal. However, it is plaintiff's burden to determine what portions of the record are necessary for review in this appeal that he has elected to file. In fact, plaintiff has designated Clerk's Papers, and in doing so essentially designated the entire trial court record. He simply has not taken any steps to have Clerk's Papers generated and then transmitted to this Court.

Plaintiff Gotcher also continues to assert that the trial court should be providing some or all of the Clerk's Papers "at public expense," but this assertion is foreclosed by the Washington Supreme Court's September 4 order. It is an indisputable fact that the Supreme Court's order means that plaintiff must pay for all costs of this appeal, which includes paying for the entire cost of all Clerk's Papers he has designated. Plaintiff's "motion to modify" underscores his ongoing defiance of court orders. He continues to reference the trial court's order of indigency, but that trial court order has no relevance at all to the appeal given the Supreme Court's September 4 order.

In support of the pleading that this Court has elected to treat as a motion to modify, plaintiff submits a declaration tellingly entitled "Supporting Affidavit for Motion of Indigency". His declaration cites to RAP 15.2(c)(2), making crystal clear that he is simply choosing to ignore the Supreme Court's September 4 order which necessarily found that he did not meet the criteria of RAP 15.2(d). As RAP 15.2 makes clear, a trial

court judge can never grant a plaintiff the right to proceed with an appeal at public expense, and it is always the Supreme Court alone that decides whether a plaintiff is permitted to proceed with an appeal at public expense. As is clear from plaintiff's own pleading, he has not paid for Clerk's Papers, and has no plans to do so – despite the court orders dictating that he must do so if he wishes to proceed with his appeal.

E. ARGUMENT WHY MODIFICATION OF THE FEBRUARY 14, 2020 NOTATION RULING SHOULD BE DENIED

This Court has bent over backward to accommodate plaintiff Gotcher, but it is time for the appeal to be dismissed given his ongoing and willful failure to comply with case deadlines and court orders. This appeal is never going to move forward, despite this Court's generosity in giving plaintiff so many extensions, given plaintiff's refusal to pay for the Clerk's Papers he has designated.

The Commissioner correctly determined that the appeal should be dismissed if plaintiff did not have the Clerk's Papers to this Court by March 13. This Court has given plaintiff many extensions, over a period of several months, to get his Clerk's Papers submitted, but he has not done so. His current pleading makes clear his ongoing defiance of the Supreme Court's September 4 order, which dictates that he must pay for his Clerk's Papers.

Despite this Court's many extensions, to this very day – twelve days past the March 13 final deadline set by Commissioner Kanazawa's notation ruling – there are no Clerk's Papers, nearly eleven months after the Notice of Appeal was filed. Given the Supreme Court's denial of his motion to proceed with his appeal at public expense, plaintiff must pay for the Clerk's Papers he has designated. See RAP 9.6(c)(3); RAP 9.7(a); RAP 15.2(d). The trial court will not provide the Clerk's Papers until plaintiff pays for them. See RAP 9.8(a). His current pleading, which this Court is treating as a motion to modify, does not provide any basis for this Court to modify the February 14 ruling. The February 14 ruling ably recites all of the chances plaintiff has been given to file his Clerk's Papers, and again sets forth for him the fact that he is responsible for the entire cost of his appeal including Clerk's Papers.

Commissioner Kanazawa correctly denied plaintiff's motion for an open-ended stay of the appeal until he is released from prison. Plaintiff cited to no authority that would support such a stay. The Commissioner also correctly held that plaintiff's appeal would automatically be dismissed if his Clerk's Papers were not received by this Court by March 13, 2020. Now, yet another "final" deadline has passed, March 13, for plaintiff to have his Clerk's Papers to this Court. Plaintiff's conduct shows that he has effectively abandoned his appeal under RAP 18.9(c):

RULE 18.9. VIOLATION OF RULES

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in rule 18.8(b), for failure to timely file a notice of appeal, a notice of discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

RAP 18.9(c); see also RAP 1.2(b).

In disputing the Commissioner's notation ruling, plaintiff relies upon RAP 2.3(b). However, RAP 2.3(b) discusses discretionary review of a trial court ruling, and has no application to a motion to modify a Court of Appeals Commissioner's ruling. No trial court rulings are before this Court on the motion to modify. Only Commissioner Kanazawa's February 14 notation ruling is before this Court.

Plaintiff also cites to RAP 18.13A(e), but this rule likewise has no application here. To the contrary, RAP 18.13A encompasses only the following very limited types of inapplicable proceedings:

- (a) Juvenile dependency disposition orders and orders terminating parental rights under chapter 13.34 RCW, dependency guardianship orders under chapter 13.36 RCW, and interim orders entered in dependency and dependency guardianship cases when discretionary review has been granted, may be reviewed by a commissioner on the merits by accelerated review as provided in this rule.

RAP 18.13A(a).

Plaintiff also complains about his alleged access to law library materials at his current prison, but that is an internal matter to be addressed through Department of Corrections procedures. His complaints about the Department of Corrections do not provide a basis for this Court to modify Commissioner Kanazawa's February 14 notation ruling.

Again, the orders to date make clear that every single aspect of plaintiff's appeal is entirely at his own expense, and that nothing will be paid at public expense. Plaintiff continues to dispute this, although it has been explained to him many times. His refusal to accept the fact that he must bear 100% of the cost of his appeal means that this appeal will never proceed. If this Court were to modify the Commissioner's February 14 ruling, this Court, months from now, will be looking at other motions and pleadings in which plaintiff continues to ignore the Supreme Court's September 4 order.

It is not this Court's job to direct the trial court as to which pleadings are necessary for review of plaintiff's appeal. And, the trial court will never transmit the Clerk's Papers without plaintiff first paying for them, given the Supreme Court's decision that plaintiff must pay for 100% of the costs of his appeal. As noted in Defendants'/Respondents' motion to dismiss, the record makes clear that, regardless of how many

additional extensions this Court might give plaintiff, there is no reason to believe the Clerk's Papers will ever be generated. Were this Court to grant plaintiff's motion to modify, the Court would simply be delaying the inevitable dismissal of the appeal for his failure to pay for his Clerk's Papers. Enough is enough. Defendants/Respondents believe plaintiff's claims against them were frivolous, a belief that was confirmed by the trial court's dismissal of all the claims. Defendants/Respondents are entitled to have this matter put behind them.

F. CONCLUSION

Plaintiff's motion to modify is legally and factually unsupported, and is completely meritless. The authority he cites does not support the relief he requests. For the foregoing reasons, the Commissioner correctly denied plaintiff's request for an open-ended stay of the appeal, and correctly held that plaintiff's appeal would automatically be dismissed if the Clerk's Papers were not received by this Court by March 13, 2020. The motion to modify should be denied, and this Court should order this appeal dismissed, as the March 13 deadline has passed without this Court receiving the Clerk's Papers designated by plaintiff.

//////

//////

DATED this 25th day of March, 2020.

SOHA & LANG, P.S.

By: *s/Nathaniel J.R. Smith*

Nathaniel J.R. Smith, WSBA # 28302

Email: smith@sohalang.com

Soha & Lang, PS

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Telephone: (206) 624-1800

***Attorneys for Defendants/Respondents
AAMCO Transmission Headquarters of
Horsham, PA#, Brian O'Donnell, AAMCO
of Seattle, Glen Barnhart***

CERTIFICATE OF SERVICE

I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action; my business address is SOHA & LANG, PS, 1325 Fourth Avenue, Suite 2000, Seattle, WA 98101.

I hereby certify that on March 25, 2020, I caused to be served a true and correct copy of the foregoing **RESPONDENTS'/ DEFENDANTS' OPPOSITION TO APPELLANT'S/PLAINTIFF'S MOTION TO MODIFY COMMISSIONER'S FEBRUARY 14, 2020 NOTATION RULING** on the following named person as indicated:

Norman Gotcher, Jr.
Pro Se
#634076
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326
Via U.S. First Class Mail

Dated this 25th day of March, 2020.

s/Helen M. Thomas
Helen M. Thomas
Legal Assistant to Nathaniel J. R.
Smith

APPENDIX D

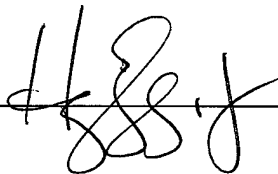
THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

AAMCO TRANSMISSION CORP., et al.,	)	No. 79882-1-I
)	
Respondents,)	
)	
v.	)	ORDER DENYING MOTION
	)	TO MODIFY AND
NORMAN GOTCHER,	)	DISMISSING APPEAL
)	
Petitioner.)	
)	

Norman Gotcher moves to modify the commissioner's February 14, 2020 ruling denying his request for a stay. Aamco Transmission Corp. filed a response and Gotcher filed a reply. We have considered the motion under RAP 17.7 and have determined that it should be denied. And because the clerk's papers have not been filed as directed by the commissioner, the appeal is dismissed.

ORDERED that the motion to modify is denied and the appeal is dismissed.

FOR THE COURT:







SOHA & LANG

September 09, 2020 - 4:18 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98789-1
Appellate Court Case Title: AAMCO Transmission Corp., et al. v. Norman Gotcher Jr.

The following documents have been uploaded:

- 987891_Answer_Reply_20200909161447SC411243_6550.pdf
This File Contains:
Answer/Reply - Answer to Motion for Discretionary Review
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Comments:

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